

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LEE QUILLAR,
CDCR #D-22639

Plaintiff,

vs.

HERBERT J. EXARHOS;
COUNTY OF SAN DIEGO,

Defendants.

Civil No. 12cv3004 JAH (MDD)

ORDER:

**(1) DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AS BARRED BY 28 U.S.C. § 1915(g)
[ECF No. 2]**

AND

**(2) DISMISSING CASE FOR
FAILURE TO PAY FILING
FEE REQUIRED BY
28 U.S.C. § 1914(a)**

Plaintiff, a state inmate currently incarcerated at Folsom State Prison located in Folsom, California and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a); instead, he has submitted a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) [ECF No. 2].

///

///

1 **I. Motion to Proceed IFP**

2 Section 1915 of Title 28 of the United States Code allows certain litigants to pursue civil
 3 litigation IFP, that is, without the full prepayment of fees or costs. 28 U.S.C. § 1915(a)(2).
 4 However, the Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the
 5 privilege to proceed IFP:

6 . . . if the prisoner has, on 3 or more prior occasions, while
 7 incarcerated or detained in any facility, brought an action or appeal
 8 in a court of the United States that was dismissed on the grounds
 9 that it is frivolous, malicious, or fails to state a claim upon which
 relief can be granted, unless the prisoner is under imminent danger
 of serious physical injury.

10 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’ provision.”
 11 *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter “*Andrews*”). “Pursuant to
 12 § 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also Andrews v.*
 13 *Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter “*Cervantes*”) (under the PLRA,
 14 “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from IFP
 15 status under the three strikes rule[.]”). The objective of the PLRA is to further “the
 16 congressional goal of reducing frivolous prisoner litigation in federal court.” *Tierney v. Kupers*,
 17 128 F.3d 1310, 1312 (9th Cir. 1997).

18 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner, which were
 19 dismissed on the ground that they were frivolous, malicious, or failed to state a claim,”
 20 *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the district court styles
 21 such dismissal as a denial of the prisoner’s application to file the action without prepayment of
 22 the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008). Once a prisoner has
 23 accumulated three strikes, he is prohibited by section 1915(g) from pursuing any other IFP action
 24 in federal court unless she can show he is facing “imminent danger of serious physical injury.”
 25 *See* 28 U.S.C. § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP
 26 complaints which “make[] a plausible allegation that the prisoner faced ‘imminent danger of
 27 serious physical injury’ at the time of filing.”).

28 ///

II. Application of 28 U.S.C. § 1915(g)

2 As an initial matter, the Court has carefully reviewed Plaintiff's Complaint and has
3 ascertained that there is no "plausible allegation" to suggest Plaintiff "faced 'imminent danger'
4 of serious physical injury' at the time of filing." *Cervantes*, 493 F.3d at 1055 (quoting 28
5 U.S.C. § 1915(g)). A court "may take notice of proceedings in other courts, both within and
6 without the federal judicial system, if those proceedings have a direct relation to matters at
7 issue." *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic,*
8 *Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria*
9 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Thus, this Court takes
10 judicial notice that Plaintiff has had three prisoner civil actions dismissed on the grounds that
11 they were frivolous, malicious, or failed to state a claim upon which relief may be granted.

12 They are:

13 1) *Quillar v. Rowlett, et al.*, Civil Case No. 2:01-cv-00301-GEB-PAN (E.D. Cal.
14 Jan. 22, 2003 Order Adopting Findings and Recommendations Dismissing Action
15 for failing to state a claim) (strike one);
16 2) *Quillar v. Alemeida, et al.*, Civil Case No. 2:02-cv-02117-DFL-DAD (E.D. Cal.
17 Feb. 2, 2004 Order Adopting Findings and Recommendations Dismissing Action
18 for failing to state a claim (strike two);
19 3) *Quillar v. Barranco, et al.*, Civil Case No. 3:04-cv-01405-DMS-JFS (S.D. Cal.
20 Aug. 13, 2004 Order Dismissing Action for failing to state a claim pursuant to 28
21 U.S.C. §§ 1915(e)(2)(b)(ii) & 1915A(b)(1) (strike three).
22

22 Accordingly, because Plaintiff has, while incarcerated, accumulated three “strikes”
23 pursuant to § 1915(g), and he fails to make a “plausible allegation” that he faced imminent
24 danger of serious physical injury at the time he filed his Complaint, he is not entitled to the
25 privilege of proceeding IFP in this action. *See Cervantes*, 493 F.3d at 1055; *Rodriguez*, 169
26 F.3d at 1180 (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners from accessing
27 the courts; it only precludes prisoners with a history of abusing the legal system from continuing

1 to abuse it while enjoying IFP status"); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th
2 Cir. 1984) ("[C]ourt permission to proceed IFP is itself a matter of privilege and not right.").

3 **III. Conclusion and Order**

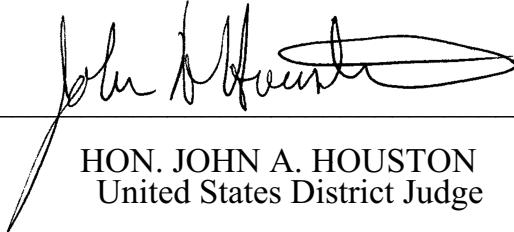
4 For the reasons set forth above, the Court hereby:

5 1) **DENIES** Plaintiff's Motion to Proceed IFP [ECF No. 2] pursuant to 28 U.S.C.
6 § 1915(g); and
7 2) **DISMISSES** this action without prejudice for failure to pay the \$350 civil filing
8 fee required by 28 U.S.C. § 1914(a).

9 The Clerk shall close the file.

10 **IT IS SO ORDERED.**

11
12 DATED: January 10, 2013



13 HON. JOHN A. HOUSTON
14 United States District Judge

15
16
17
18
19
20
21
22
23
24
25
26
27
28